

### **REMARKS**

This communication is being filed in response to the final Office Action having a mailing date of June 25, 2007. Claims 1-31 are currently pending.

#### **I. Overview and summary of issues**

The final Office Action indicated that the affidavit/declaration filed on April 10, 2007 was ineffective to overcome Best (U.S. Patent No. 7,061,972). Accordingly, the final Office Action maintained the rejection of claims 1-3, 6, 10-12, 14-16, 19, 22-24, and 26-30 under 35 U.S.C. § 103(a) on the basis of Best.

In detail, the final Office Action indicated on page 2 that conception “must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another.” Further, page 2 of the Office Action indicated that the affidavit/declaration’s statement of “We were in possession of the invention defined by the claims of the application identified above (‘the present application’) prior to April 4, 2002” is insufficient to overcome Best, and further indicated that the affidavit/declaration must “produce such documentary evidence and exhibits in support thereof.”

A telephone conversation was held between the Examiner and the applicants’ attorney (Dennis M. de Guzman) on July 12, 2007, discussing the final Office Action and the contents of the affidavit/declaration. The Examiner is thanked for taking the time to conduct the telephone conference and for discussing his position and suggestions for a response.

In the telephone conversation, the Examiner indicated that he rejected the affidavit/declaration primarily because specific dates of actual conception were not provided with respect to the exhibits that accompanied the inventor (Philip Mattos) affidavit/declaration. For example, the Exhibit B document did not have a physical date indicated it, but rather, the accompanying affidavit/declaration (paragraph 3 of Mr. Mattos’ declaration) stated that the Exhibit B document was provided “prior to April 4, 2002.”

Mr. de Guzman explained to the Examiner that providing specific actual dates of conception was not required, and offered to provide MPEP citations to support his position. The Examiner suggested that a formal written response to the final Office Action be filed to provide said MPEP citation(s) and to provide any other arguments that the applicants deem to be

appropriate. Further, the Examiner indicated to Mr. de Guzman that the Examiner would be willing to consider any supplemental affidavit/declaration or evidence, presented along with the written response, to further evidence conception prior to April 4, 2002.

The Examiner is again thanked for his suggestions and cooperation in moving the present application forward towards a positive outcome. This present written response is thus being filed in accordance with the Examiner's suggestions.

## II. Discussion of the prior-filed affidavit/declaration

With regards to providing specific actual dates of conception, MPEP § 715.07(II) states the following (emphasis ours):

### “II. ESTABLISHMENT OF DATES

If the dates of the exhibits have been removed or blocked off, the matter of dates can be taken care of in the body of the oath or declaration.

When alleging that conception or a reduction to practice occurred prior to the effective date of the reference, the dates in the oath or declaration may be the actual dates or, if the applicant or patent owner does not desire to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date. However, the actual dates of acts relied on to establish diligence must be provided. See MPEP § 715.07(a) regarding the diligence requirement.”

Accordingly, Mr. Mattos' affidavit/declaration followed the long-accepted U.S. Patent Office practice of asserting a date of conception occurring prior to the date of the reference (prior to April 4, 2002), without having to specifically disclose an actual date of conception. In this regard, it is respectfully submitted that the statements in Mr. Mattos' affidavit/declaration asserting conception dates occurring “prior to April 4, 2002” were sufficient to establish conception.

The documents of Exhibits A and B of Mr. Mattos' affidavit/declaration provide documentary support for earlier conception. For example and as stated in Mr. Mattos' affidavit/declaration in paragraph 3, pages 5 and 9 of the Exhibit B document show and describe the embodiments corresponding to Figures 7 and 3 of the present application. Therefore, the

final Office Action's stated requirement that the affidavit/declaration must "produce such documentary evidence and exhibits in support thereof" has been met.

Furthermore, the documents of Exhibits A and B were disclosed by Mr. Mattos to other individuals. For instance, it can be seen that the Exhibit A document was disclosed/provided by Mr. Mattos to Mr. Jean-Jacques de Jong and subsequently provided to Mr. Ian M. Loveless (the attorney that prepared the priority EP patent application). Additionally, as stated in paragraph 3 of Mr. Mattos affidavit/declaration, the document of Exhibit B was disclosed/provided by Mr. Mattos to Mr. Loveless. Thus, the final Office Action's stated requirement of "proof, such as by demonstrative evidence or by a complete disclosure to another" has been met.

In view of the above, it is respectfully submitted that the prior filed affidavit/declaration is sufficient to show conception prior to April 4, 2002. Accordingly, the Examiner is kindly requested to reconsider and withdraw the rejections.

### III. Supplemental information

A supplemental affidavit/declaration by Mr. Loveless is being provided herewith, along with accompanying Exhibits 1A and 2A. Specifically, the documents of Exhibits 1A and 1B are draft patent applications that describe embodiments of the invention, with said draft applications being prepared prior to April 4, 2002 based on invention disclosure materials provided by Mr. Mattos to Mr. Loveless prior to April 4, 2002.

It is respectfully submitted that the supplemental affidavit/declaration and accompanying Exhibits 1A and 1B provide further evidence of earlier conception.

In accordance with MPEP § 715.09(C), it is further respectfully submitted that the attached supplemental affidavit/declaration and accompanying Exhibits 1A and 2A are being timely presented. The appropriate showing(s) of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented is/are that:

It was (and still) believed that the prior filed affidavit/declaration of Mr. Mattos did indeed provide adequate proof of earlier conception. However, the final Office Action has come to a different conclusion, indicating that documentary evidence and exhibits and other

showing to prove earlier conception are required and thus issued new grounds for rejection accordingly. Therefore, this present supplemental affidavit/declaration and accompanying Exhibits 1A and 2A are being submitted so as to further address these new grounds of rejection or requirement (for evidence or other showing of earlier conception) made in the final Office Action.

#### IV. Conclusion

In view of the above remarks and accompanying materials, it is respectfully submitted that the rejected claims are allowable, since Best does not qualify as prior art.

The final Office Action indicated that certain dependent claims would be allowable if rewritten in independent form. The Examiner is thanked for this indication of allowable subject matter. The applicants may consider/reconsider rewriting said dependent claims to independent form after receiving the Examiner's feedback on the arguments presented above.

Further, if there are any informalities or questions that can be addressed via telephone, the Examiner is encouraged to contact Mr. de Guzman at (206) 622-4900.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Application No. 10/632,566  
Reply to Office Action dated June 25, 2007

All of the claims remaining in the application are believed to be allowable.  
Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,  
SEED Intellectual Property Law Group PLLC

/Dennis M. de Guzman/

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DMD:sc

Enclosures:  
Supplemental Rule 131 Declaration  
Exhibits 1A and 2A

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